
HOUSE BILL 2550

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By Representatives Lekanoff, Fitzgibbon, Doglio, Peterson, Pollet,
and Macri

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Energy.

1 AN ACT Relating to establishing net ecological gain as a policy
2 for application across identified land use, development, and
3 environmental laws; amending RCW 90.74.020 and 90.74.040; reenacting
4 and amending RCW 90.74.010; adding a new chapter to Title 70 RCW; and
5 creating a new section.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The definitions in this section apply
8 throughout this chapter unless the context clearly requires
9 otherwise.

10 (1) "Mitigation" means the restoration, creation, enhancement, or
11 preservation of ecosystems, habitats, or natural resources for the
12 purposes of compensating for unavoidable adverse impacts that remain
13 after all appropriate and practicable avoidance and minimization has
14 been achieved. "Mitigation" includes mitigation that:

15 (a) Occurs at the same time as, or in advance of, a project's
16 environmental impacts;

17 (b) Is located either on-site of the project's impacts or within
18 an appropriate geographic scale defined by the department of ecology
19 to ensure ecological health of the same watershed; and

20 (c) Provides the same in-kind biological functions and values as
21 the functions and values impacted by the project.

1 (2) (a) "Mitigation hierarchy" means a management system to
2 address environmental impacts through mitigation that is prioritized
3 in descending order as follows:

4 (i) Avoidance: Measures taken to avoid creating direct, indirect,
5 or cumulative impacts from the outset of a development project,
6 policy, plan, or activity;

7 (ii) Minimization: Measures taken to reduce any combination of
8 the duration, intensity, or extent of direct, indirect, or cumulative
9 impacts that cannot be completely avoided under (a)(i) of this
10 subsection;

11 (iii) Rehabilitation or restoration: Measures taken to
12 rehabilitate degraded ecosystems or restore impacted ecosystems
13 following exposure to impacts that cannot be completely avoided under
14 (a)(i) of this subsection or minimized under (a)(ii) of this
15 subsection;

16 (iv) Offset: Measures taken to compensate for any residual
17 impacts that cannot be completely avoided, minimized, or
18 rehabilitated or restored under (a)(i) through (iii) of this
19 subsection including, but not limited to, measures that use positive
20 management interventions such as restoration of degraded habitat,
21 arrested degradation of habitat or ecosystems, or averted risks to
22 habitat or ecosystems, and protection of areas where there is
23 imminent or projected loss of ecological integrity;

24 (v) Compensation: Measures to recompense, make good, or pay
25 damages for loss of ecological integrity caused by a project, policy,
26 plan, or activity that falls short of achieving net ecological gain
27 through measures implemented consistent with (a)(i) through (iv) of
28 this subsection. Compensation may only occur if net ecological gain
29 cannot be achieved by measures identified in (a)(i) through (iv) of
30 this subsection.

31 (b) Before utilizing a lower level in the mitigation hierarchy,
32 project proponents must demonstrate that it is not possible to
33 mitigate environmental impacts through actions taken consistent with
34 higher levels of the mitigation hierarchy.

35 (3) "Net ecological gain" means a standard for a development
36 project, policy, plan, or activity in which the impacts on the
37 ecological integrity caused by the development are outweighed by
38 measures taken consistent with the mitigation hierarchy to avoid and
39 minimize the impacts, undertake site restoration, and compensate for

1 any remaining impacts in an amount sufficient for the gain to exceed
2 the loss.

3 NEW SECTION. **Sec. 2.** (1) It is the policy of the state that
4 environmental, land use, and development laws in chapters 90.58,
5 36.70A, 77.55, and 70.105D RCW result in the achievement of net
6 ecological gain, except where otherwise specified in statute.

7 (2) Where state agencies with rule-making authority derived from
8 environmental, land use, and development laws have discretion under
9 existing statutory authority to establish a standard of ecological or
10 habitat protections or are not otherwise bound to a different
11 standard of ecological protectiveness, those agencies must adopt
12 rules to establish and implement a standard of net ecological gain.

13 NEW SECTION. **Sec. 3.** (1) By December 1, 2020, and consistent
14 with RCW 43.01.036, the office of financial management must submit a
15 report to the legislature that assesses how to incorporate net
16 ecological gain and the mitigation hierarchy into state land use,
17 development, and environmental laws and rules. The report must
18 address each environmental, development, or land use law or rule
19 where the existing standard is less protective of ecological
20 integrity than the standard of net ecological gain and must include
21 the following laws and rules adopted under these laws:

- 22 (a) The shoreline management act, chapter 90.58 RCW;
- 23 (b) The growth management act, chapter 36.70A RCW;
- 24 (c) Construction projects in state waters regulated under chapter
25 77.55 RCW; and
- 26 (d) The model toxics control act, chapter 70.105D RCW.

27 (2) In developing the report under this section, the office of
28 financial management must consult with the appropriate state agencies
29 with subject matter expertise on environmental, land use, and
30 development laws including, but not limited to, the department of
31 ecology, the department of fish and wildlife, and the department of
32 commerce.

- 33 (3) The report must include:
 - 34 (a) An assessment of opportunities and challenges for local
35 government implementation of a standard of net ecological gain under
36 different environmental, development, and land use laws;
 - 37 (b) Recommendations on funding, incentives, technical assistance,
38 monitoring, and other use of scientific data, and other applicable

1 considerations to the integration of net ecological gain into each
2 environmental, development, and land use law or rule;

3 (c) Recommendations regarding instances in which net ecological
4 gain can be achieved using voluntary or incentive-based program
5 structures and where net ecological gain is likely only to be
6 achieved through regulatory requirements; and

7 (d) Assessments of how applying a standard of net ecological gain
8 in the context of each environmental, land use, or development law is
9 likely to achieve substantial environmental or social cobenefits.

10 (4) The definitions in section 1 of this act apply throughout
11 this section unless the context clearly requires otherwise.

12 **Sec. 4.** RCW 90.74.010 and 2012 c 62 s 3 are each reenacted and
13 amended to read as follows:

14 The definitions in this section apply throughout this chapter
15 unless the context clearly requires otherwise.

16 (1) "Compensatory mitigation" means the restoration, creation,
17 enhancement, or preservation of uplands, wetlands, or other aquatic
18 resources for the purposes of compensating for unavoidable adverse
19 impacts that remain after all appropriate and practicable avoidance
20 and minimization has been achieved. "Compensatory mitigation"
21 includes mitigation that:

22 (a) Occurs at the same time as, or in advance of, a project's
23 planned environmental impacts;

24 (b) Is located in a site either on, near, or distant from the
25 project's impacts; and

26 (c) Provides either the same or different biological functions
27 and values as the functions and values impacted by the project.

28 (2) "Family forest fish passage program" means the program
29 administered by the recreation and conservation office created
30 pursuant to RCW 76.09.410 that provides public cost assistance to
31 small forestland owners associated with the road maintenance and
32 abandonment processes.

33 (3) "Forestry riparian easement program" means the program
34 established in RCW 76.13.120.

35 (4) "Infrastructure development" means an action that is critical
36 for the maintenance or expansion of an existing infrastructure
37 feature such as a highway, rail line, airport, marine terminal,
38 utility corridor, harbor area, or hydroelectric facility and is
39 consistent with an approved land use planning process, or that is an

1 activity regulated under chapter 76.09 RCW. This planning process may
2 include the growth management act, chapter 36.70A RCW, or the
3 shoreline management act, chapter 90.58 RCW, in areas covered by
4 those chapters.

5 (5) "Mitigation" means sequentially avoiding impacts, minimizing
6 impacts, or compensating for remaining unavoidable impacts.

7 (6) "Mitigation plan" means a document or set of documents
8 developed through joint discussions between a project proponent and
9 environmental regulatory agencies that describe the unavoidable
10 wetland or aquatic resource impacts of a proposed infrastructure
11 development (~~(or noninfrastructure development)~~) and the proposed
12 compensatory mitigation for those impacts.

13 (~~(7) ("Noninfrastructure development" means a development project~~
14 ~~that requires the completion of compensatory mitigation that does not~~
15 ~~meet the definition of "infrastructure development" and is consistent~~
16 ~~with an approved land use planning process. This planning process may~~
17 ~~include the growth management act, chapter 36.70A RCW, or the~~
18 ~~shoreline management act, chapter 90.58 RCW, in areas covered by~~
19 ~~those chapters.~~

20 (~~(8)~~) "Project proponent" means a public or private entity
21 responsible for preparing a mitigation plan.

22 (~~((9))~~) (8) "Riparian open space program" means the program
23 created pursuant to RCW 76.09.040.

24 (~~((10))~~) (9) "Watershed" means an area identified as a state of
25 Washington water resource inventory area under WAC 173-500-040 as it
26 exists on June 7, 2012.

27 **Sec. 5.** RCW 90.74.020 and 2012 c 62 s 4 are each amended to read
28 as follows:

29 (1) Project proponents may use a mitigation plan to propose
30 compensatory mitigation within a watershed. A mitigation plan shall:

31 (a) Contain provisions that guarantee the long-term viability of
32 the created, restored, enhanced, or preserved habitat, including
33 assurances for protecting any essential biological functions and
34 values defined in the mitigation plan;

35 (b) Contain provisions for long-term monitoring of any created,
36 restored, or enhanced mitigation site; and

37 (c) Be consistent with the local comprehensive land use plan and
38 any other applicable planning process in effect for the development
39 area, such as an adopted subbasin or watershed plan.

1 (2) (a) ((The)) When considering infrastructure development, the
2 departments of ecology and fish and wildlife may not limit the scope
3 of options in a mitigation plan to areas on or near the project site,
4 or to habitat types of the same type as contained on the project
5 site. The departments of ecology and fish and wildlife shall fully
6 review and give due consideration to compensatory mitigation
7 proposals that improve the overall biological functions and values of
8 the watershed or bay and accommodate the mitigation needs of the
9 infrastructure development ((or noninfrastructure development)),
10 including proposals or portions of proposals that are explored or
11 developed in RCW 90.74.040.

12 (b) The departments of ecology and fish and wildlife are not
13 required to grant approval to a mitigation plan that the departments
14 find does not provide equal or better biological functions and values
15 within the watershed or bay.

16 (3) When making a permit or other regulatory decision for
17 infrastructure projects under the guidance of this chapter, the
18 departments of ecology and fish and wildlife shall consider whether
19 the mitigation plan provides equal or better biological functions and
20 values, compared to the existing conditions, for the target resources
21 or species identified in the mitigation plan. This consideration
22 shall be based upon the following factors:

23 (a) The relative value of the mitigation for the target
24 resources, in terms of the quality and quantity of biological
25 functions and values provided;

26 (b) The compatibility of the proposal with the intent of broader
27 resource management and habitat management objectives and plans, such
28 as existing resource management plans, watershed plans, critical
29 areas ordinances, the forestry riparian easement program, the
30 riparian open space program, the family forest fish passage program,
31 and shoreline master programs;

32 (c) The ability of the mitigation to address scarce functions or
33 values within a watershed;

34 (d) The benefits of the proposal to broader watershed landscape,
35 including the benefits of connecting various habitat units or
36 providing population-limiting habitats or functions for target
37 species;

38 (e) The benefits of early implementation of habitat mitigation
39 for projects that provide compensatory mitigation in advance of the
40 project's planned impacts; and

1 (f) The significance of any negative impacts to nontarget species
2 or resources.

3 (4) A mitigation plan ((may)) must be approved through a
4 memorandum of agreement between the project proponent and either the
5 department of ecology or the department of fish and wildlife, or
6 both.

7 **Sec. 6.** RCW 90.74.040 and 2012 c 62 s 5 are each amended to read
8 as follows:

9 (1)(a) To the degree that resources are deemed available by the
10 affected departments, the department of ecology and the department of
11 fish and wildlife shall allow, when appropriate, programs that are
12 related to environmental mitigation, or explore the potential of
13 developing new programs, to utilize the forestry riparian easement
14 program, the riparian open space program, or the family forest fish
15 passage program to mitigate for environmental impacts from projects
16 conducted in the state where compatible with existing regulations.
17 The use of these programs may not be additive to existing
18 compensatory mitigation requirements.

19 (b) In implementing this subsection, the department of natural
20 resources may be used as a resource, consistent with RCW 76.09.480,
21 to assist in identifying potential projects that can be used for the
22 mitigation of infrastructure ((and noninfrastructure)) development.

23 (2) The department of ecology and the department of fish and
24 wildlife are authorized to seek federal or private funds and in-kind
25 contributions to implement this section. The scope of effort in
26 implementing this section may be defined by the success of the
27 department of ecology and the department of fish and wildlife in
28 securing specific funding.

29 NEW SECTION. **Sec. 7.** Sections 1 and 2 of this act constitute a
30 new chapter in Title 70 RCW.

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